



General Assembly

Substitute Bill No. 941

January Session, 2003

**AN ACT CONCERNING CHANGES TO THE STATUTES REGARDING
PERSONS WITH MENTAL RETARDATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-668 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 Guardians of the property, and limited guardians of the property, of
4 persons who are not minors and who are [mentally retarded] persons
5 with mental retardation, appointed as such guardians or limited
6 guardians under chapter 779a prior to October 1, 1982, shall serve on
7 or after October 1, 1982, as conservators of the estates of such persons
8 as if appointed conservators under the provisions of sections 45a-644
9 to 45a-662, inclusive, and in accordance with the provisions of said
10 sections. Any guardian of the person or property of a minor person
11 who is mentally retarded, appointed under chapter 779a, prior to
12 October 1, 1982, may continue to serve as such guardian on or after
13 October 1, 1982, as if appointed under and in accordance with the
14 provisions of sections 45a-132, 45a-593 to 45a-597, inclusive, 45a-603 to
15 45a-662, inclusive, 45a-629 to 45a-638, inclusive, relative to guardians
16 of minors. Such guardianship shall terminate upon the minor reaching
17 the age of eighteen. Continuation of the guardianship of the estate
18 shall be by application made pursuant to the provisions of sections
19 45a-644 to 45a-662, inclusive. Continuation of the guardianship of the
20 person shall be by application made pursuant to the provisions of

21 sections 45a-668 to 45a-684, inclusive. Any guardian of the person of a
22 [mentally retarded] person with mental retardation who is not a
23 minor, appointed under chapter 779a prior to October 1, 1982, may
24 continue to serve as such guardian after October 1, 1982. Upon filing of
25 a periodic account by any guardian appointed under the provisions of
26 chapter 779a, prior to October 1, 1982, the court shall require a probate
27 bond in the same manner as under sections 45a-132, 45a-593 to 45a-597,
28 inclusive, 45a-603 to 45a-622, inclusive, 45a-629 to 45a-638, inclusive, or
29 45a-644 to 45a-662, inclusive. Failure to furnish a probate bond or
30 written acceptance of guardianship required under the provisions of
31 said sections, shall be cause for termination of the continued service of
32 the fiduciary provided for in this section.

33 Sec. 2. Section 45a-669 of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective October 1, 2003*):

35 For purposes of sections 45a-668 to 45a-684, inclusive, as amended
36 by this act, the following terms shall have the following meanings:

37 (a) "Plenary guardian of a [mentally retarded] person with mental
38 retardation" means a person, legally authorized state official, or private
39 nonprofit corporation, except a hospital or nursing home as defined in
40 section 19a-521, appointed by a court of probate pursuant to the
41 provisions of sections 45a-668 to 45a-684, inclusive, as amended by this
42 act, to supervise all aspects of the care of an adult person, as
43 enumerated in subsection (d) of section 45a-677, as amended by this
44 act, for the benefit of such adult, who by reason of the severity of his
45 mental retardation, has been determined to be totally unable to meet
46 essential requirements for his physical health or safety and totally
47 unable to make informed decisions about matters related to his care.

48 (b) "Legally competent" means having the legal power to direct
49 one's personal and financial affairs. All persons in this state eighteen
50 years of age and over are legally competent unless determined
51 otherwise by a court in accordance with the provisions of sections 45a-
52 668 to 45a-684, inclusive, or unless otherwise provided by law.

53 (c) "Limited guardian of a [mentally retarded] person with mental
54 retardation" means a person, legally authorized state official, or a
55 private nonprofit corporation, except a hospital or nursing home as
56 defined in section 19a-521, appointed by a court of probate pursuant to
57 the provisions of sections 45a-668 to 45a-684, inclusive, as amended by
58 this act, to supervise certain specified aspects of the care of an adult
59 person, as enumerated in subsection (d) of section 45a-677, as amended
60 by this act, for the benefit of such adult, who by reason of the severity
61 of his mental retardation, has been determined to be able to do some,
62 but not all, of the tasks necessary to meet essential requirements for his
63 physical health or safety or to make some, but not all, informed
64 decisions about matters related to his care.

65 (d) ["Mentally retarded person"] "Person with mental retardation"
66 means a person who has a condition defined as mental retardation
67 pursuant to section 1-1g.

68 (e) "Respondent" means an adult person for whom an application
69 for guardianship or limited guardianship of the person has been filed.

70 (f) "Unable to meet essential requirements for his physical health or
71 safety" means the inability through one's own efforts and through
72 acceptance of assistance from family, friends and other available
73 private and public sources, to meet one's needs for medical care,
74 nutrition, clothing, shelter, hygiene or safety so that, in the absence of a
75 guardian of the [mentally retarded] person with mental retardation
76 serious physical injury, illness or disease is likely to occur.

77 (g) "Unable to make informed decisions about matters related to
78 one's care" means the inability of a [mentally retarded] person with
79 mental retardation to achieve a rudimentary understanding, after
80 conscientious efforts at explanation, of information necessary to make
81 decisions about his need for physical or mental health care, food,
82 clothing, shelter, hygiene, protection from physical abuse or harm, or
83 other care.

84 (h) "Ward" means a person for whom a guardianship is granted

85 under sections 45a-668 to 45a-684, inclusive, as amended by this act.

86 Sec. 3. Section 45a-672 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2003*):

88 The notice required by subsection (a) of section 45a-671 shall inform
89 such respondent of (1) whether the guardianship sought is a plenary or
90 a limited guardianship and that the court, notwithstanding which type
91 of guardianship is sought, may appoint a plenary guardian or a
92 limited guardian of the [mentally retarded] person with mental
93 retardation with such limitations as the court determines; (2) the legal
94 consequences of both plenary and limited guardianships; (3) the facts
95 alleged in the application and the limitations on the guardian's
96 authority, if any, specifically applied for; and (4) the right to be
97 represented by counsel.

98 Sec. 4. Section 45a-674 of the general statutes is repealed and the
99 following is substituted in lieu thereof (*Effective October 1, 2003*):

100 At any hearing for appointment of a plenary guardian or limited
101 guardian of the [mentally retarded] person with mental retardation,
102 the court shall receive evidence as to the condition of the respondent,
103 including a written report or testimony by a Department of Mental
104 Retardation assessment team appointed by the Commissioner of
105 Mental Retardation or his designee, no member of which is related by
106 blood, marriage or adoption to either the applicant or the respondent
107 and each member of which has personally observed or examined the
108 respondent within forty-five days next preceding such hearing. The
109 assessment team shall be comprised of at least three representatives
110 from among appropriate disciplines having expertise in the evaluation
111 of persons alleged to be mentally retarded. The assessment team
112 members shall make their report on a form provided for that purpose
113 by the Office of the Probate Court Administrator and shall answer
114 questions on such form as fully and completely as possible. The report
115 shall contain specific information regarding the severity of the mental
116 retardation of the respondent and those specific areas, if any, in which

117 he needs the supervision and protection of a guardian, and shall state
118 upon the form the reasons for such opinions. The applicant,
119 respondent or his counsel shall have the right to present evidence and
120 cross-examine witnesses who testify at any hearing on the application.
121 If such respondent or his counsel notifies the court not less than three
122 days before the hearing that he wishes to cross-examine the witnesses,
123 the court shall order such witnesses to appear. The fees for such
124 assessment team shall be paid from funds appropriated to the
125 Department of Mental Retardation.

126 Sec. 5. Section 45a-676 of the general statutes is repealed and the
127 following is substituted in lieu thereof (*Effective October 1, 2003*):

128 (a) If the court finds, by clear and convincing evidence, that the
129 respondent is, by reason of the severity of his mental retardation,
130 totally unable to meet essential requirements for his physical health or
131 safety and totally unable to make informed decisions about matters
132 related to his care, the court shall appoint a plenary guardian or
133 plenary coguardians of the [mentally retarded] person with mental
134 retardation who shall have all those powers and duties provided for in
135 section 45a-677, as amended by this act.

136 (b) If the court finds by clear and convincing evidence that the
137 respondent is able to do some, but not all, of the tasks necessary to
138 meet essential requirements for his physical health or safety or that the
139 respondent is able to make some, but not all, informed decisions about
140 matters related to his care, the court shall appoint a limited guardian
141 or limited coguardians of the [mentally retarded] person with mental
142 retardation.

143 (c) For purposes of sections 45a-668 to 45a-784, inclusive, as
144 amended by this act, and section 46b-29, any alleged inability of the
145 respondent must be evidenced by recent behavior which would cause
146 harm or create a risk of harm, by clear and convincing proof.

147 (d) The court shall take from any such plenary guardian or limited
148 guardian a written acceptance of such guardianship and, if the court

149 deems it necessary for the protection of the respondent, a probate
150 bond.

151 (e) The court shall make written findings of fact which support each
152 grant of authority to the plenary guardian or limited guardian. If the
153 court in reaching its conclusion is relying on incidents of behavior
154 which occurred more than six months prior to the date of hearing, the
155 court findings shall include its reasoning for relying upon such
156 incidents.

157 (f) In selecting a plenary guardian or limited guardian of the
158 [mentally retarded] person with mental retardation, the court shall be
159 guided by the best interests of the respondent, including, but not
160 limited to, the preference of the respondent as to who should be
161 appointed as plenary guardian or limited guardian. No person shall be
162 excluded from serving as a plenary guardian or limited guardian
163 solely because he is employed by the Department of Mental
164 Retardation, except that (1) no such employee may be appointed as a
165 plenary guardian or limited guardian of a [mentally retarded] person
166 with mental retardation residing in a state-operated residential facility
167 for the mentally retarded located in the Department of Mental
168 Retardation region in which such person is employed; and (2) no such
169 employee shall be so appointed unless no other suitable person to
170 serve as plenary guardian or limited guardian can be found. Any
171 appointment of an employee of the Department of Mental Retardation
172 as a plenary guardian or limited guardian shall be made for a limited
173 purpose and duration. During the term of appointment of any such
174 employee, the Commissioner of Mental Retardation shall search for a
175 suitable person who is not an employee of the department to replace
176 such employee as plenary guardian or limited guardian.

177 Sec. 6. Section 45a-677 of the general statutes is repealed and the
178 following is substituted in lieu thereof (*Effective October 1, 2003*):

179 (a) The court may assign to a limited guardian of a [mentally
180 retarded] person with mental retardation any portion of the duties and

181 powers listed in subsection (d) of this section for those particular areas
182 in which the respondent lacks the capacity to meet the essential
183 requirements for such respondent's physical or mental health or safety.

184 (b) A limited guardian may also be assigned the duty to assist the
185 respondent in those particular areas in which the capacity of the
186 respondent to meet the essential requirements of such respondent's
187 physical or mental health or safety, protect such respondent's rights,
188 obtain necessary services, or to fulfill such respondent's civil duties is
189 impaired, as well as in other ways not specifically prohibited by
190 sections 45a-668 to 45a-684, inclusive, as amended by this act.

191 (c) A limited guardian of a [mentally retarded] person with mental
192 retardation shall have only such of the duties and responsibilities and
193 powers of a guardian of a [mentally retarded] person with mental
194 retardation under subsection (d) of this section as the court shall
195 specify based upon its findings with regard to the individual need of
196 the respondent for supervision. The guardian shall have the duty to
197 report to the probate court which appointed such limited guardian at
198 least annually the condition of the respondent. The preceding duties,
199 responsibilities and powers shall be carried out within the limitations
200 of the resources available to the ward, either through the ward's own
201 estate or by reason of private or public assistance.

202 (d) The court may assign to a limited guardian the custody of the
203 ward for the purpose of exercising any, but not all, of the following
204 limited duties and powers, in order to assist the ward in achieving
205 self-reliance: (1) To assure and consent to a place of abode outside the
206 natural family home, (2) to consent to specifically designed
207 educational, vocational or behavioral programs, (3) to consent to the
208 release of clinical records and photographs, (4) to assure and consent
209 to routine, elective and emergency medical and dental care, and (5)
210 other specific limited powers to assure and consent to services
211 necessary to develop or regain to the maximum extent possible the
212 ward's capacity to meet essential requirements. All plenary guardians
213 and limited guardians appointed pursuant to sections 45a-668 to

214 45a-684, inclusive, as amended by this act, shall also have a duty to
215 assure the care and comfort of the ward within the limitations of their
216 appointment, and within the limitations of the resources available to
217 the ward either through the ward's own estate or by reason of private
218 or public assistance.

219 (e) A plenary guardian or limited guardian of a [mentally retarded]
220 person with mental retardation shall not have the power or authority:
221 (1) To cause the ward to be admitted to any institution for treatment of
222 the mentally ill, except in accordance with the provisions of sections
223 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to
224 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576,
225 inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664,
226 inclusive, and chapter 420b; (2) to cause the ward to be admitted to any
227 training school or other facility provided for the care and training of
228 the mentally retarded if there is a conflict concerning such admission
229 between the guardian and the [mentally retarded] person with mental
230 retardation or next of kin, except in accordance with the provisions of
231 sections 17a-274 and 17a-275; (3) to consent on behalf of the ward to a
232 sterilization, except in accordance with the provisions of sections 45a-
233 690 to 45a-700, inclusive; (4) to consent on behalf of the ward to
234 psychosurgery, except in accordance with the provisions of section
235 17a-543; (5) to consent on behalf of the ward to the termination of the
236 ward's parental rights, except in accordance with the provisions of
237 sections 45a-706 to 45a-709, inclusive, 45a-715 to 45a-718, inclusive,
238 45a-724 to 45a-737, inclusive, and 45a-743 to 45a-757, inclusive; (6) to
239 consent on behalf of the ward to the performance of any experimental
240 biomedical or behavioral medical procedure or participation in any
241 biomedical or behavioral experiment, unless it is (A) intended to
242 preserve the life or prevent serious impairment of the physical health
243 of the ward, (B) it is intended to assist the ward to regain the ward's
244 abilities and has been approved for the ward by the court, or (C) has
245 been (i) approved by a recognized institutional review board, as
246 defined by 45 CFR 46, 21 CFR 50 and 21 CFR 56, as amended from time
247 to time, and which is not a part of the Department of Mental

248 Retardation, (ii) endorsed or supported by the Department of Mental
249 Retardation, and (iii) approved for the ward by such ward's primary
250 care physician; (7) to admit the ward to any residential facility
251 operated by an organization by whom such guardian is employed,
252 except in accordance with the provisions of section 17a-274; (8) to
253 prohibit the marriage or divorce of the ward; and (9) to consent on
254 behalf of the ward to an abortion or removal of a body organ, except in
255 accordance with applicable statutory procedures when necessary to
256 preserve the life or prevent serious impairment of the physical or
257 mental health of the ward.

258 (f) A plenary guardian or limited guardian shall submit a report to
259 the court: (1) Annually; (2) when the court orders additional reports to
260 be filed; or (3) when there is a significant change in the capacity of the
261 ward to meet the essential requirements for the ward's physical health
262 or safety; (4) when the plenary guardian or limited guardian resigns or
263 is removed; and (5) when the guardianship is terminated.

264 (g) Such reports shall be submitted on a form provided by the Office
265 of the Probate Court Administrator and shall contain the following
266 information: (1) Significant changes in the capacity of the ward to meet
267 the essential requirements for the ward's physical health or safety; (2)
268 the services being provided to the ward and the relationship of those
269 services to the individual guardianship plan; (3) the significant actions
270 taken by the limited guardian of a [mentally retarded] person with
271 mental retardation or plenary guardian of a [mentally retarded] person
272 with mental retardation during the reporting period; (4) any significant
273 problems relating to the guardianship which have arisen during the
274 reporting period; and (5) whether such guardianship, in the opinion of
275 the guardian, should continue, be modified, or be terminated, and the
276 reasons therefor.

277 (h) When any [mentally retarded] person with mental retardation
278 for whom a guardian has been appointed becomes a resident of any
279 town in the state in a probate district other than the one in which a
280 guardian was appointed, or becomes a resident of any town in the

281 state to which the guardianship file has been transferred under this
282 section, such court in that district may, upon motion of any person
283 deemed by the court to have sufficient interest in the welfare of the
284 respondent, including, but not limited to, the guardian, the
285 Commissioner of Mental Retardation or the commissioner's designee,
286 or a relative of the person under guardianship, transfer the file to the
287 probate district in which the person under guardianship resides at the
288 time of the application, provided the transfer is in the best interest of
289 the [mentally retarded] person with mental retardation. A transfer of
290 the file shall be accomplished by the probate court in which the
291 guardianship matter is on file by making copies of all documents in the
292 court and certifying each of them and then causing them to be
293 delivered to the court for the district in which the person under
294 guardianship resides. When the transfer is made, the court of probate
295 in which the person under guardianship resides at the time of transfer
296 shall thereupon assume jurisdiction over the guardianship and all
297 further accounts shall be filed with such court.

298 (i) A plenary guardian or limited guardian of a [mentally retarded]
299 person with mental retardation and, to the extent appropriate, such
300 person shall be the primary decision maker with respect to programs
301 needed by such person and policies and practices affecting the well-
302 being of such person within the authority granted by the court
303 pursuant to this section, provided any such decision does not conflict
304 with the requirements of section 17a-238. In making any such decision,
305 the plenary guardian or limited guardian shall consult with the ward
306 and appropriate members of the ward's family, where possible. A
307 limited guardian shall be the primary decision maker only with respect
308 to such duties assigned to the limited guardian by the court. The
309 provisions of this subsection shall be included in any court order
310 appointing a plenary guardian or limited guardian of a [mentally
311 retarded] person with mental retardation.

312 Sec. 7. Section 45a-678 of the general statutes is repealed and the
313 following is substituted in lieu thereof (*Effective October 1, 2003*):

314 Any plenary guardian or limited guardian of the [mentally
315 retarded] person with mental retardation serving in accordance with
316 the provisions of sections 45a-668 to 45a-684, inclusive, as amended by
317 this act, may be removed by the court of probate which appointed such
318 guardian and another person appointed guardian of the [mentally
319 retarded] person with mental retardation if the court of probate
320 making such appointment, after notice and hearing as required in
321 section 45a-671, finds such removal and appointment of a new plenary
322 guardian or limited guardian of the [mentally retarded] person with
323 mental retardation to be in the best interest of the respondent. In the
324 event an application for removal has been filed under this section, the
325 attorney of record for the respondent shall have access to all of the
326 records of the respondent.

327 Sec. 8. Section 45a-679 of the general statutes is repealed and the
328 following is substituted in lieu thereof (*Effective October 1, 2003*):

329 If a ward has both a plenary guardian or limited guardian of the
330 [mentally retarded] person with mental retardation and a conservator
331 of the estate or person or a temporary conservator who are not the
332 same person and a conflict arises between the two concerning the
333 duties and responsibilities or authority of either, the matter shall be
334 submitted to the court of probate making the appointment of such
335 guardian or conservator and such court shall, after a hearing, order the
336 course of action which in its discretion is in the best interest of the
337 ward.

338 Sec. 9. Section 45a-680 of the general statutes is repealed and the
339 following is substituted in lieu thereof (*Effective October 1, 2003*):

340 Whenever a court of probate appoints a plenary guardian or limited
341 guardian of the [mentally retarded] person with mental retardation,
342 such court may appoint a standby plenary guardian or a standby
343 limited guardian of the [mentally retarded] person with mental
344 retardation. Such standby shall act if the appointed plenary guardian
345 or limited guardian of the [mentally retarded] person with mental

346 retardation dies, becomes incapable, or renounces his plenary
347 guardianship or limited guardianship. The standby plenary guardian
348 or standby limited guardian shall immediately inform the court of
349 probate which has jurisdiction over such guardianship of his
350 assumption of the guardianship and the reason therefor. The standby
351 guardian, in the event of the guardian's death, incapacity or
352 renunciation, shall, upon furnishing a probate bond if such a bond had
353 been required from the plenary guardian or limited guardian whose
354 duties are being assumed, but without further proceedings, be
355 empowered to assume the duties of his office immediately upon the
356 death or adjudication of incompetency of the plenary guardian of the
357 person or limited guardian of the person of the [mentally retarded]
358 person with mental retardation, subject only to confirmation of his
359 appointment by the court of probate within sixty days following
360 assumption of his duties of office.

361 Sec. 10. Section 45a-681 of the general statutes is repealed and the
362 following is substituted in lieu thereof (*Effective October 1, 2003*):

363 (a) The court shall review each guardianship of the [mentally
364 retarded] person with mental retardation or limited guardianship of
365 the [mentally retarded] person with mental retardation at least every
366 three years and shall either continue, modify or terminate the order for
367 guardianship. The court shall receive and review written evidence as
368 to the condition of the ward. The guardian, the attorney for the ward
369 and a Department of Mental Retardation professional or, if requested
370 by the ward or by the court, an assessment team appointed by the
371 Commissioner of Mental Retardation or his designee shall each submit
372 a written report to the court within forty-five days of the court's
373 request for such report. If the ward is unable to request or obtain an
374 attorney, the court shall appoint an attorney for the ward. If the ward
375 is unable to pay for the services of the attorney, the reasonable
376 compensation of such attorney shall be established by, and paid from
377 funds appropriated to, the Judicial Department; however, if funds
378 have not been included in the budget of the Judicial Department for
379 such purposes, such compensation shall be established by the Probate

380 Court Administrator and paid from the Probate Court Administration
381 Fund. The Department of Mental Retardation professional or
382 assessment team shall personally observe or examine the ward within
383 the forty-five-day period preceding the date of submission of its
384 report.

385 (b) If the court determines, after receipt of the reports from the
386 attorney for the ward, the Department of Mental Retardation
387 professional or assessment team and the guardian, that there has been
388 no change in the condition of the ward since the last preceding review
389 by the court, a hearing on the condition of the ward shall not be
390 required, but the court, in its discretion, may hold such hearing. If the
391 attorney for the ward, the Department of Mental Retardation
392 professional or assessment team or the guardian requests a hearing,
393 the court shall hold a hearing within thirty days of such request. No
394 order expanding or reducing the powers and responsibilities of a
395 guardian shall be issued unless such hearing is held.

396 Sec. 11. Section 45a-683 of the general statutes is repealed and the
397 following is substituted in lieu thereof (*Effective October 1, 2003*):

398 Any plenary guardian of a [mentally retarded] person with mental
399 retardation, temporary limited guardian or limited guardian of a
400 [mentally retarded] person with mental retardation who acts in good
401 faith or pursuant to order of a court of probate pursuant to the
402 provisions of sections 45a-668 to 45a-684, inclusive, as amended by this
403 act, shall be immune from civil liability, except that such immunity
404 shall not extend to gross negligence.

405 Sec. 12. Section 45a-684 of the general statutes is repealed and the
406 following is substituted in lieu thereof (*Effective October 1, 2003*):

407 All fees and expenses incurred under sections 45a-668 to 45a-684,
408 inclusive, as amended by this act, except as otherwise provided, shall
409 be paid pursuant to [subsections (i) and (j) of section 45a-105] sections
410 45a-106 and 45a-111.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>October 1, 2003</i>
Sec. 12	<i>October 1, 2003</i>

PH *Joint Favorable Subst.*